IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/10/2004

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE S.R.SINGHARAVELU

T.C.No.841 of 2004

Commissioner of Income Tax .. Appellant
Madurai.

-Vs-

M/s.Madurai Soft Drinks Pvt. Ltd. .. Respondent
Madurai.

PRAYER: Against the order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 30.1.2003 in I.T.A.No.1432/Mds/97 pertaining to the assessment year 1990-91.

!For Appellant : Mr.J.Narayanasamy
Junior Standing Counsel
for Income Tax Cases

^For Respondents: ---

:JUDGMENT
(Judgment of this Court was delivered by P.D.DINAKARAN,J.)

The appellant is the revenue. This appeal is with reference to the assessment year 1990-91. According to the appellant/revenue, the respondent/assessee filed a return for the assessment year 1990-91 and the assessing officer, by assessment order dated 29.3.1993, disallowed the claim of the respondent/assessee in respect of 100% depreciation on purchase of bottles and crates; and also taxed the deposits received by the respondent/assessee from the agents and retailers.

2. Aggrieved by the assessment order dated 29.3.1993, the respondent/assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals), by order dated 2 5.9.2000, allowed the issue with respect to the deposits received from the agents and retailers, while confirming the assessment order with respect to rejection of 100% depreciation on purchase of bottles and crates.

3. On an appeal and counter appeal, by both sides, against the respective aggrieved portion of the order of the Commissioner of Income Tax

(Appeals) dated 25.9.2000, the Tribunal, by order dated 30.1.2003 made in I.T.A.No.1432/Mds/97, decided both the issues in favour of the assessee, viz., (i) allowed 100% depreciation on the purchase of bottles and crates; and (ii) held that deposits received by the respondent/assessee from the agents and retailers are not revenue receipts and are therefore, not taxable. Hence, the above appeals.

4. The appellant/revenue formulated the following substantial questions of law for our consideration:

(i) whether in the facts and circumstances of the case, the Tribunal was right in holding that crates and bottles are entitled for depreciation at the rate of 100%?
(ii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the security deposits received from the agents and the retailers are not taxable in the hands of the assessee?

5.1. Question (i) - Whether in the facts and circumstances of the case, the Tribunal was right in holding that crates and bottles are entitled for depreciation at the rate of 100%?

5.2. Even though the appellant/revenue treated the bottles in question as a whole and considered the same as a unit and calculated the value above Rs.5000/- and contended that the respondent/assessee is not entitled for 100% depreciation, the law is now well settled as per the decision of this Court in FIRST LEASING CO. OF INDIA LTD. v. COMMISSIONER OF INCOME-TAX, [2000] 244 ITR 238. Under similar facts and circumstances of the case, the Division Bench of this Court, in the FIRST LEASING CO. OF INDIA LTD. v. COMMISSIONER OF INCOME-TAX case, referred supra, held that each bottle was an independent unit and was not dependent for its user on the availability of other bottles whether empty or filled. The use of one bottle was not interconnected with the use of other bottles. Since each bottle was an individual unit and all bottles together did not constitute a single integrated unit depreciation under the proviso to Section 32(1)(ii) of the Income Tax (for brevity "the Act"), is allowable.

5.2. As per the rules of interpretation, it is not the policy of the law to introduce complexity even when matters can be dealt with in a simple and straightforward manner by giving full effect to the words used in the statutory provision, unless there are compelling reasons evident from the context in which the provision occurs. Therefore, each of the bottle has to be considered as an independent unit.

5.3. Similar view is also taken by a Division Bench of the Allahabad High Court in COMMISSIONER OF INCOME TAX v. AQUEOUS VICTUALS P. LTD, [2004] 266 ITR 573, where also the bottles and crates used by the soft drink bottlers were held entitled to depreciation. In the said decision, the Allahabad High Court, following a decision of the Andhra Pradesh High Court in COMMISSIONER OF INCOME TAX v. SRI KRISHNA BOTTLERS PVT. LTD., [1989] 175 ITR 154 held that bottles were essential tools of the trade. Without the bottles and shells, the soft drink could not be effectively transported. The bottles and

their contents were totally interdependent. So were the shells. The bottles and shells also satisfied the durability test because it was nobody's case that their life was so transitory or negligible to warrant an inference that they had no function to play in the assessee's trade. They were, therefore, "plant" for purposes of the Act and the assessee is entitled to depreciation in respect of them under Section 32(1)(ii) of the Act.

5.4. The said decision of the Andhra Pradesh High Court in COMMISSIONER OF INCOME TAX v. SRI KRISHNA BOTTLERS PVT. LTD., referred supra, was confirmed by the Apex Court by a decision reported in [1994] 20 9 ITR (St.) 85.

5.5. The view taken by the Allahabad High Court in COMMISSIONER OF INCOME TAX v. AQUEOUS VICTUALS P. LTD, referred supra, was also confirmed by the Apex Court by a decision reported in [2004] 266 ITR (St.) 2.

5.6. Applying the ratio enunciated from the aforesaid decisions to the facts of the case on hand, we are of the considered opinion, that the Tribunal was right in holding that crates and bottles are entitled for depreciation at the rate of 100%.

6.1. Question (ii) - Whether in the facts and circumstances of the case, the Tribunal was right in holding that the security deposits received from the agents and the retailers are not taxable in the hands of the assessee?

6.2. Concededly, in assessee's own case, viz., C.I.T. v. MADURAI SOFT DRINKS (P) LTD., [2000] 240 ITR 229, the Division Bench of this Court held that the deposits received from the agents and retailers for the bottles used as containers of soft drinks did not constitute income of the assessee.

6.3. A similar view was also taken by the Division Bench of the Delhi High Court in COMMISSIONER OF INCOME TAX v. GOYAL GASES P. LTD., [1 991] 188 ITR 216, wherein the assessee carried on the business of filling gas bought by it in cylinders and supplying them to customers. The customers were required to furnish security for the cylinders supplied to them. The Appellate Tribunal found that depreciation was allowable on the cylinders and that the expenses incurred by the assessee towards repairs were allowable as revenue deduction. The Tribunal further found that the security deposit did not belong to the assessee and the money remained as that of the consumers since, on the return of the cylinders, their security deposit was refundable and hence, the security deposit was not a revenue receipt, and the said view of the Tribunal was upheld by the Division Bench of the Delhi High Court.

6.4.1. Mr.J.Narayanasamy, learned standing counsel for the appellant/revenue inviting our attention to the decision of the Apex Court in COMMISSIONER OF INCOME TAX v. PUNJAB DISTILLING INDUSTRIES LTD., [196 4] 53 ITR 75 (SC) contends that the amount deposited by the agents and retailers are to be treated as trading receipts constituting income of the assessee, which is taxable. A deep consideration is, therefore, required to deal as to the applicability of the ratio laid down by Apex Court in COMMISSIONER OF INCOME

TAX v. PUNJAB DISTILLING INDUSTRIES LTD., referred supra, to the facts of the instant case.

6.4.2. In fact, the ratio laid down in COMMISSIONER OF INCOME TAX v. PUNJAB DISTILLING INDUSTRIES LTD., [1964] 53 ITR 75 is a reiteration of the ratio decedendi of the judgment of the Apex Court in an earlier case of the same assessee before the Apex Court in the year 1959, viz., Punjab Distilling Industries Ltd. v. Commissioner of Incometax, [1959] 35 I.T.R. 519 (S.C.), and the facts of both the cases are identical. The assessee, viz., Punjab Distilling Industries Ltd., was a distiller of bottled country liquor and was carrying on the business of selling bottled country liquor to licensed wholesalers. Due to shortage of bottles during war time, a "buy-back scheme" was evolved by the Government, whereunder the distiller company charged the wholesaler a price for the bottle in which liquor was supplied at a rate fixed by the Government, which the company was bound to repay to the wholesaler on his returning the bottles. In addition to this, the distiller took a further sum from the wholesaler describing it as " Empty Bottles Return Security Deposit". Like the price of the bottles, these monies were also repaid as and when bottles were returned. That entire sum was refunded when 90% of the bottles covered by it had been returned, though the remaining 10% of the bottles had not been returned. Thus, the object of demanding and taking additional sums as security deposits was obviously to provide additional inducement for the return of the bottles to the distiller so that its trade in selling the produce of its distillery might not be hampered for want of bottles. It is also interesting to observe that the Government had not fixed any time limit within which the bottles had to be returned in order to entitle the wholesaler to the refund, nor had a refund ever been refused. The said "buy-back scheme" of the Government to ensure the return of bottles is intended to relieve the scarcity of bottles.

6.4.3. The distiller was assessed to income tax on the balance of amounts, viz., the additional sums left after the refunds were made. Then the question arose whether the balance of amounts of these additional sums left after the refunds were made is assessable? The Apex Court in Punjab Distilling Industries Ltd. v. Commissioner of Incometax [1959] 35 I.T.R. 519 (S.C.), while dealing with assessments for the assessment years 1947-48 and 1948-49, held the balance of amounts of additional sums left after the refunds is assessable, because the trade consisted of sale of bottled liquor and the consideration for the sale was constituted by several amounts respectively, (i) the price of the liquor; (ii) the price of the bottle; and (iii) the security deposit. Unless all these sums were paid, the assessee would not have sold the liquor. So, the amount which was called the security deposit was actually a part of consideration for the sale and therefore, a part of the price of what was sold.

6.4.4. When the question whether the charge viz., "empty bottles return security deposit" is a trading receipt assessable to tax, with reference to the assessment years 1946-47, 1949-50, 1950-51 and 1951-52, came for the consideration of the Income Tax Officer, the Income Tax Officer taxed these charges and on appeal , the same was confirmed by the Appellate

Assistant Commissioner. On further appeal, the Tribunal reversed the decisions of the authorities below and held that these charges were loans and not trading receipts, and the same happened even before rendering the decision reported in Punjab Distilling Industries Ltd. v. Commissioner of Income-tax [1959] 35 I.T.R. 519 (S.C.), with respect of the assessment years 1947-48 and 1948-49.

6.4.5. Under such circumstances, the Commissioner of Income-Tax obtained a reference of the following question to the Punjab High Court, viz., whether the collections by the assessee company described in its accounts are 'empty bottles return security deposits' were income assessable under Section 10 of the Income Tax Act. The Punjab High Court took the view that as a result of the amendment to the Punjab Excise Rules made under the Punjab Excise Act, which came into effect from 1.4.1948, the charges collected after that date were not covered by that judgment, and held that the amended rule made the ratio decidendi of the earlier judgment in the same assessee case reported in Punjab Distilling Industries Ltd. v. Commissioner of Income-tax [1959] 3 5 I.T.R. 519 (S.C.), inapplicable to the charges collected after that date.

6.4.6. The Apex Court, on appeal preferred by the revenue, in COMMISSIONER OF INCOME TAX v. PUNJAB DISTILLING INDUSTRIES LTD., [1964] 53 ITR 75 (SC), held that it has never been in dispute, either before the amendment or later, that the charge under the "buy-back scheme" which was collected under the Government's sanction constituted a taxable income. The mere fact that the charges were collected as security deposit for the purpose of showing that they were not a part of trading transaction would not, by itself, render the said charges as security deposit as the same is a part of trading transaction and the return of bottles was necessary to enable the assessee to carry on its trade to sell liquor in them.

6.4.7. In the instant case, as in the case of COMMISSIONER OF INCOME TAX v. GOYAL GASES P. LTD., referred supra, the security deposit collected by the assessee from the agents and retailers did not form part of the sale transaction, unlike in the case of COMMISSIONER OF INCOME TAX v. PUNJAB DISTILLING INDUSTRIES LTD., [1964] 53 ITR 75 (SC), where "empty bottles return security deposit" forms a part of the sale transaction, as per the "buy-back scheme" formulated by the Government under the Punjab Excise Rules.

6.5. For the aforesaid reasons, we are of the firm opinion that the contention made on behalf of the appellant/revenue that the "empty bottles return security deposits" received from the agents and retailers are trade receipts, is liable to be rejected and the said amount is not taxable in the hands of the assessee. The Tribunal was, therefore, right in holding that the security deposits received from the agents and the retailers are not taxable in the hands of the assessee.

Finding, therefore, no substantial question of law for our consideration, this appeal is dismissed.

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Internet : Yes

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To:

1. The Income Tax Appellate Tribunal Chennai 'B' Bench,
Chennai.
2. The Commissioner of Income Tax (Appeals-IX)
Chennai.
3. The Deputy Commissioner of Income Tax, Special Range-I,
Madurai-I.
4. The Commissioner of Income Tax, Madurai.